

REMARKS

Claims 28-31 have been cancelled. Claims 5-9, 13, 24-25 and 32-33 have been withdrawn. Claims 1-4, 10-12, 14-23 and 26-27 have been amended to more distinctly set out the patentable subject matter of Applicants' invention. Support for these amendments can be found throughout the specification.

**PROVISIONAL ELECTION AND
TRAVERSAL OF RESTRICTION REQUIREMENT**

Responsive to the Election/Restriction Requirement dated December 4, 2006, the species described with respect to Figure 1 drawn to an optical polarizer film is provisionally elected, with traverse, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. At least Claim 1, as amended, is believed to be generic. Amended Claims 1-4, 10-12, 14-23 and 26-27 read on the elected species. Applicants reserve the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicants do not hereby abandon or waive any rights in the non-elected species.

The requirement is being traversed for the reasons set forth in detail below.

The restriction requirement is very unconventional, difficult to understand, and does not comply with the Manual of Patent Examining Procedure (8th Edition, Revised August, 2006; "the MPEP"). Restriction Requirements are made when groups of claims to inventions are found to be either independent or distinct. See MPEP § 806. The Examiner must point out the reasons why such claim species are considered either independent or distinct. Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why each invention as claimed is either independent or distinct from the others; and (B) the reasons why there would be a serious burden on the Examiner if restriction is not required, i.e., the reasons for insisting upon restriction therebetween as set forth in the following sections. A mere statement of conclusion is inadequate. See MPEP § 808.

In particular, the Examiner must indicate exactly how the application is to be restricted: "The examiner must provide a clear and detailed record of the restriction requirement to provide a clear demarcation between restricted inventions... In setting forth the restriction requirement, separate inventions should be identified by a grouping of the claims with a short description of

the total extent of the invention claimed in each group, specifying the type or relationship of each group as by stating the group is drawn to a process, or to a subcombination, or to a product, etc., and should indicate the classification or separate status of each group, as for example, by class and subclass.” MPEP § 814. Section 817 of the MPEP presents an outline to be followed by patent examiners in setting forth a restriction requirement.

Applicant cannot recognize the parts of the Section 817 outline in the Restriction Requirement. Further, the Examiner has not set forth any groups of claims to independent or distinct inventions. It is therefore believed insufficient for the Examiner to simply refer to certain figures in the application without an indication of which claims belong to which supposed claimed species groups. The Examiner’s election requirement is therefore improper and should be withdrawn.

With respect to aspect (A), the Examiner has simply stated that the enumerated Species are structurally different from each other without any analysis supporting this conclusion. No reasoning has been presented. Fig. 1 illustrates a polarizing film utilizing moth-eye structures in accordance with Applicants’ invention. Figs. 12-15 illustrate various additional embodiments using multiple moth-eye structures in accordance with Applicants’ invention. Fig. 6 illustrates an embodiment using linear prisms. Although moth-eye structures and linear prisms are structurally different, these embodiments may all be properly used as subwavelength optical microstructures in accordance with Applicants’ invention. “Structural difference : alone is an insufficient reason to find claims are “independent” and “distinct.”

With respect to aspect (B), the Examiner has not given any reason why examining all the claims together would be a serious burden for the Examiner. To establish reasons for insisting on restriction, the Examiner must show by appropriate explanation one of the following: (1) separate classification of the inventions; (2) separate status in the art of inventions classified together; or (3) different fields of search for the inventions. See MPEP § 808.02. None of these were shown by the Examiner.

Moreover, it should be noted that the features described in the claims of Species A-F already have been examined by the Office together, as evidenced by the three substantive Office Actions issued in this case. In particular, the Office mailed a Restriction Requirement dated February 10, 2005, an Action dated June 8, 2005, and a Final Action dated March 13, 2006. In

each of the previous substantive Actions, the Office examined the claims of Species A-F together. There would be no additional burden on the Examiner to continue that examination.

In view of the Examiner's previous three Actions, the recent mailing of an Office Action that now requires further election is a cause of concern to Applicants regarding the pace of prosecution. Piecemeal examination should be avoided as much as possible. MPEP § 707.07(g).

In view of the foregoing and in the absence of sufficient explanation of the restriction requirement and for its justification, Applicants request withdrawal of the requirement a single species.

Respectfully submitted,

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